

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HORACIO GUIBELALDE and
MARTA MABEL FOLGADO

11 CV 4908 (TPG)

Plaintiffs,

-against-

THE REPUBLIC OF ARGENTINA,

Defendant.

**DECLARATION OF MICHAEL C. SPENCER IN SUPPORT OF MOTION
BY PLAINTIFFS FOR PARTIAL SUMMARY JUDGMENT**

I, Michael C. Spencer, declare as follows:

1. I am of counsel to the law firm of Milberg LLP, counsel to Plaintiffs, and I am resident in the firm's New York office.
2. I make this Declaration to put before the Court certain facts and documents related to Plaintiffs' Motion for Partial Summary Judgment.
3. Attached to this Declaration as Exhibit 1 is a true and correct copy of the Fiscal Agency Agreement, dated October 19, 1994 (the "1994 FAA").
4. Attached to this Declaration as Exhibit 2 is a true and correct copy of the Order in *NML Capital, Ltd. v. Republic of Argentina*, Nos. 08 Civ. 6978 (TPG), 09 Civ. 1707 (TPG), 09 Civ. 1708 (TPG) (S.D.N.Y. Dec. 7, 2011).
5. Attached to this Declaration as Exhibit 3 is a true and correct copy of Argentina Law 25,561, enacted on January 6, 2002, with an English translation.

6. Attached to this Declaration as Exhibit 4 is a true and correct copy of the decision in *Claren Corp. c/ E.N.*, C. 462, XLVII (Mar. 6, 2014), with an English translation.

7. Attached to this Declaration as Exhibit 5 is the prospectus for the 2010 Exchange, dated April 27, 2010.

8. Attached to this Declaration as Exhibit 6 is a true and correct copy of Argentina Law 26,017, enacted on February 10, 2005, with an English translation.

9. Attached to this Declaration as Exhibit 7 is a true and correct copy of the prospectus supplement for the 2005 Exchange, dated January 10, 2005.

10. Attached to this Declaration as Exhibit 8 is a true and correct copy of the transcription of the stenographic version of the 38th Meeting, 1st Extraordinary Session of the Argentine Republic Chamber of Senators of the Nation, held on February 3, 2005, with an English translation.

11. Attached to this Declaration as Exhibit 9 is a true and correct copy of the transcript of Meeting No. 37, First Special Session held on February 9, 2005 to discuss the System for Exchanging Bonds Issued by the Argentine Government, with an English translation.

12. Attached to this Declaration as Exhibit 10 is a true and correct copy of Argentina Law 26,547, enacted on December 9, 2009, with an English translation.

13. Attached to this Declaration as Exhibit 11 is a true and correct copy of Argentina's notice of the completion of its 2010 exchange offer, dated September 27, 2010.

14. Attached to this Declaration as Exhibit 12 is a true and correct copy of the Order in *NML Capital, Ltd. v. Republic of Argentina*, Nos. 08 Civ. 6978 (TPG), 09 Civ. 1707 (TPG), 09 Civ. 1708 (TPG) (S.D.N.Y. Feb. 23, 2012).

15. Attached to this Declaration as Exhibit 13 is a true and correct copy of the Supreme Court's denial of certiorari in *Republic of Argentina v. NML Capital, Ltd., et al.*, No. 12-1494 (S. Ct. Oct. 7, 2013).

16. Attached to this Declaration as Exhibit 14 is a true and correct copy of the Amended February 23, 2012 Order in *NML Capital, Ltd. v. Republic of Argentina*, Nos. 08 Civ. 6978 (TPG), 09 Civ. 1707 (TPG), 09 Civ. 1708 (TPG) (S.D.N.Y. Nov. 21, 2012).

17. Attached to this Declaration as Exhibit 15 is a true and correct copy of the Supreme Court's denial of certiorari in *Republic of Argentina v. NML Capital, Ltd., et al.*, No. 13-990 (S. Ct. June 16, 2014).

18. Attached to this Declaration as Exhibit 16 is a true and correct copy of the Second Circuit's Order in *NML Capital, Ltd v. The Republic of Argentina*, No. 12-105(L) (2d Cir. June 18, 2014).

19. Attached to this Declaration as Exhibit 17 is a true and correct transcript of the televised address given by Argentina President Cristina Fernández de Kirchner on August 26, 2013, with an English translation.

20. Attached to this Declaration as Exhibit 18 is a true and correct copy of Argentina Law 26,886, enacted on September 11, 2013, with an English translation.

21. Attached to this Declaration as Exhibit 19 is a true and correct copy of the Court's Order in *NML Capital, Ltd v. The Republic of Argentina*, Nos. 08 Civ. 6978 (TPG), 09 Civ. 1707 (TPG), 09 Civ. 1708 (TPG) (S.D.N.Y.); *Aurelius Capital Master, Ltd. and ACP Master, Ltd. v. The Republic of Argentina*, Nos. 09 Civ. 8757 (TPG), 09 Civ. 10620 (TPG); *Aurelius Opportunities Fund II, LLC and Aurelius Capital Master, Ltd. v. The Republic of Argentina*, Nos. 10 Civ. 1602 (TPG), 10 Civ. 3507 (TPG); *Aurelius Capital Master, Ltd. and Aurelius*

Opportunities Fund II, LLC v. The Republic of Argentina, Nos. 10 Civ. 3970 (TPG), 10 Civ. 8339 (TPG); *Blue Angel Capital I LLC v. The Republic of Argentina*, Nos. 10 Civ. 4101 (TPG), 10 Civ. 4782 (TPG); *Olifant Fund, Ltd. v. The Republic of Argentina*, No. 10 Civ. 9587 (TPG); *Pablo Alberto Varela, et al. v. The Republic of Argentina*, No. 10 Civ. 5338 (TPG) (S.D.N.Y. Oct. 3, 2013).

22. Attached to this Declaration as Exhibit 20 is a true and correct copy of the Reply Brief of Petitioner on Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit in *Republic of Argentina v. NML Capital, Ltd., et al.*, No. 13-990 (May 27, 2014).

23. Attached to this Declaration as Exhibit 21 is a true and correct copy of a transcript of a hearing in *NML Capital, Ltd., et al. v. The Republic of Argentina*, No. 08 Civ. 6978 (TPG) (S.D.N.Y. May 30, 2014).

24. Attached to this Declaration as Exhibit 22 is a true and correct copy of Argentina President Cristina Fernández de Kirchner's Statement issued from her presidential office at the Casa Rosada on June 16, 2014, with an English translation.

25. Attached to this Declaration as Exhibit 23 is a true and correct copy of Argentina Economy Minister Axel Kicillof's Statement issued at a press conference on June 17, 2014, with an English translation.

26. Attached to this Declaration as Exhibit 24 is a true and correct copy of a transcript of a hearing in *NML Capital, Ltd., et al. v. The Republic of Argentina*, No. 08 Civ. 6978 (TPG) (S.D.N.Y. Jun. 18, 2014).

27. Attached to this Declaration as Exhibit 25 is a true and correct copy of the Court's Order in *NML Capital, Ltd v. The Republic of Argentina*, Nos. 08 Civ. 6978 (TPG), 09 Civ. 1707 (TPG), 09 Civ. 1708 (TPG) (S.D.N.Y.); *Aurelius Capital Master, Ltd. and ACP Master, Ltd. v.*

The Republic of Argentina, Nos. 09 Civ. 8757 (TPG), 09 Civ. 10620 (TPG); *Aurelius Opportunities Fund II, LLC and Aurelius Capital Master, Ltd. v. The Republic of Argentina*, Nos. 10 Civ. 1602 (TPG), 10 Civ. 3507 (TPG); *Aurelius Capital Master, Ltd. and Aurelius Opportunities Fund II, LLC v. The Republic of Argentina*, Nos. 10 Civ. 3970 (TPG), 10 Civ. 8339 (TPG); *Blue Angel Capital I LLC v. The Republic of Argentina*, Nos. 10 Civ. 4101 (TPG), 10 Civ. 4782 (TPG); *Olifant Fund, Ltd. v. The Republic of Argentina*, No. 10 Civ. 9587 (TPG); *Pablo Alberto Varela, et al. v. The Republic of Argentina*, No. 10 Civ. 5338 (TPG) (S.D.N.Y. Jun. 20, 2014).

28. Attached to this Declaration as Exhibit 26 is a true and correct copy of the Court's Order in *NML Capital, Ltd v. The Republic of Argentina*, No. 08 Civ. 6978 (S.D.N.Y. Aug. 6, 2014) (ECF No. 636).

29. Attached to this Declaration as Exhibit 27 is a true and correct copy of the article "Argentina Deposits \$1 Billion for June 30 Bond Payments," which was published by Bloomberg News on June 26, 2014.

30. Attached to this Declaration as Exhibit 28 is a true and correct copy of the Court's Order in *NML Capital, Ltd v. The Republic of Argentina*, Nos. 08 Civ. 6978 (TPG), 09 Civ. 1707 (TPG), 09 Civ. 1708 (TPG) (S.D.N.Y.); *Aurelius Capital Master, Ltd. and ACP Master, Ltd. v. The Republic of Argentina*, Nos. 09 Civ. 8757 (TPG), 09 Civ. 10620 (TPG); *Aurelius Opportunities Fund II, LLC and Aurelius Capital Master, Ltd. v. The Republic of Argentina*, Nos. 10 Civ. 1602 (TPG), 10 Civ. 3507 (TPG); *Aurelius Capital Master, Ltd. and Aurelius Opportunities Fund II, LLC v. The Republic of Argentina*, Nos. 10 Civ. 3970 (TPG), 10 Civ. 8339 (TPG); *Blue Angel Capital I LLC v. The Republic of Argentina*, Nos. 10 Civ. 4101 (TPG), 10 Civ. 4782 (TPG); *Olifant Fund, Ltd. v. The Republic of Argentina*, No. 10 Civ. 9587 (TPG);

Pablo Alberto Varela, et al. v. The Republic of Argentina, No. 10 Civ. 5338 (TPG) (S.D.N.Y. Aug. 6, 2014).

31. Attached to this Declaration as Exhibit 29 is a true and correct copy of the letter from Argentina's Secretary of Finance, Pablo Julio López, to Bank of New York Mellon, dated July 3, 2014, with an English translation.

32. Attached to this Declaration as Exhibit 30 is a true and correct copy of the letter from the Argentina Ministry of Economy and Public Finances to Bank of New York Mellon, dated August 6, 2014.

33. Attached to this Declaration as Exhibit 31 is a true and correct copy of the letter from Argentina's Secretary of Finance, Pablo Julio López, to Citibank, N.A., dated August 6, 2014.

34. Attached to this Declaration as Exhibit 32 is a true and correct copy of the article "Argentina Revokes BNY Mellon Licenses, Seeks Local Heard of Creditor-Linked Firm," which was published by Bloomberg News on August 26, 2014.

35. Attached to this Declaration as Exhibit 33 is a true and correct copy of the article "Argentina Moves to Pay Exchange Bondholders in Argentina," which was posted on Online.WSJ.com on August 20, 2014.

36. Attached to this Declaration as Exhibit 34 is a true and correct copy of the article "Argentina's Bonds Decline on Plan to Offer Local-Law Swap," which was posted on Bloomberg.com on August 20, 2014.

37. Attached to this Declaration as Exhibit 35 is a true and correct copy of Argentina Public Debt Securities Law No. 26,984, which was enacted on September 11, 2014, with an English translation.

38. Attached to this Declaration as Exhibit 36 is a true and correct copy of the article “Argentine Lower House Passes Legislation to Pay Debt Locally,” which was posted on Bloomberg.com on September 11, 2014.

39. Attached to this Declaration as Exhibit 37 is a true and correct copy of the article “Argentina’s Lopez Said to Meet With Investors Over Debt Swap,” which was posted on Bloomberg.com on September 4, 2014.

40. Attached to this Declaration as Exhibit 38 is a true and correct copy of the article “P. López, Campaigning in NY to Promote the Swap,” which was published by Ambito Financiero on September 5, 2014, with an English translation.

41. Attached to this Declaration as Exhibit 39 is a true and correct copy of the article “Pablo López Traveled to China after Seeing Bondholders in USA,” which was published by Clarín on September 5, 2014, with an English translation.

42. Attached to this Declaration as Exhibit 40 is a true and correct copy of the Court’s Amended and Supplemental Order in *NML Capital, Ltd v. The Republic of Argentina*, Nos. 08 Civ. 6978 (TPG), 09 Civ. 1707 (TPG), 09 Civ. 1708 (TPG) (S.D.N.Y.); *Aurelius Capital Master, Ltd. and ACP Master, Ltd. v. The Republic of Argentina*, Nos. 09 Civ. 8757 (TPG), 09 Civ. 10620 (TPG); *Aurelius Opportunities Fund II, LLC and Aurelius Capital Master, Ltd. v. The Republic of Argentina*, Nos. 10 Civ. 1602 (TPG), 10 Civ. 3507 (TPG); *Aurelius Capital Master, Ltd. and Aurelius Opportunities Fund II, LLC v. The Republic of Argentina*, Nos. 10 Civ. 3970 (TPG), 10 Civ. 8339 (TPG); *Blue Angel Capital I LLC v. The Republic of Argentina*, Nos. 10 Civ. 4101 (TPG), 10 Civ. 4782 (TPG); *Olifant Fund, Ltd. v. The Republic of Argentina*, No. 10 Civ. 9587 (TPG); *Pablo Alberto Varela, et al. v. The Republic of Argentina*, No. 10 Civ. 5338 (TPG) (S.D.N.Y. Oct. 3, 2014).

43. Attached to this Declaration as Exhibit 41 is a true and correct copy of the article “Argentina Bond Holdouts Say Nation Still Defying Court,” which was posted on Bloomberg.com on October 2, 2014.

44. Attached to this Declaration as Exhibit 42 is a true and correct copy of the article “The Government will on Friday deposit the debt maturities in accounts at the Banco Nación,” which was published by El Cronista on December 31, 2014, with an English translation.

45. Attached to this Declaration as Exhibit 43 is a true and correct copy of the Declaration of Professor Andreas F. Lowenfeld, dated August 31, 2000.

46. Attached to this Declaration as Exhibit 44 is a true and correct copy of the decision in *LNC Invs. LLC v. Republic of Nicaragua*, Folio 2000 No. 1061, R.K. 240/03 (Commercial Ct. of Brussels Sept. 11, 2003), *rev’d in part on other grounds*, Gen. Doc. No. 2003/KR/334 (Court of Appeals of Brussels, 9th Chamber, Mar. 19, 2004), with an English translation.

47. Attached to this Declaration as Exhibit 45 is a true and correct copy of *Elliott Assocs. L.P.*, General Docket No. 2000/QR/92, at ¶ 6 (Court of Appeals of Brussels, 8th Chamber, Sept. 26, 2000), with an English translation.

48. Attached to this Declaration as Exhibit 46 is a true and correct copy of the decision in *Claren Corp. c/ Estadio Nacional*, CFed, sala X, 2010, with an English translation.

49. Attached to this Declaration as Exhibit 47 is a true and correct copy of the United States Securities and Exchange Commission Form 18-K, Annual Report of The Republic of Argentina following the fiscal year ending December 31, 2010.

50. Attached to this Declaration as Exhibit 48 is a true and correct copy of “We would never pay the vulture funds,” which was published by Página 12 on March 6, 2012, with an English translation.

51. My firm, together with our co-counsel in Argentina, maintains communications with our clients who are plaintiffs in the numerous actions we have on defaulted Argentine bonds. We regularly obtain bank statements and updates from our clients concerning their holdings.

52. Based on that information, and to the best of my information and belief, the Plaintiffs herein remain beneficial owners of their Bonds as alleged in the complaint; the bonds were issued pursuant to the 1994 FAA; and Plaintiffs did not participate in Argentina’s 2005 or 2010 Bond Exchange with respect to their bonds.

53. Argentina has not made any principal or interest payments on the Plaintiffs’ bonds since December 2001.

I declare under penalty of perjury that to the best of my knowledge the foregoing is true and correct.

New York, New York
February 20, 2015

/s/ Michael C. Spencer

Michael C. Spencer